

| Document Log Item | | Release | |
|--|--------------------|---|----------------------------------|
| Addressing | | | |
| From | | To | |
| Jessica Greathouse/R3/USEPA/US | | Eric Carlson/R3/USEPA/US@EPA LaRonda Koffi/R3/USEPA/US@EPA Catherine Libertz/R3/USEPA/US@EPA Eric | |
| CC | | BCC | |
| | | | |
| Description | | | Form Used: Memo |
| Subject | | Date/Time | |
| Fw: Everything that will go out at 12:05 PM - please hold it until then | | 06/11/2009 12:34 PM | |
| # of Attachments | Total Bytes | NPM | Contributor |
| 4 | 4,313,999 | | Jessica Greathouse |
| Processing | | | |
| Comments | | | |
| | | | |
| <input type="text"/> Clear Category | | <input type="text"/> Non-responsive | |
| | | | |
| Release | | | |
| | | | <input type="checkbox"/> Printed |
| <input type="text"/> Clear MARKER | | | |
| | | | |
| <input type="radio"/> Round01 <input type="radio"/> NA <input checked="" type="radio"/> Round02 | | | |

Body

Document Body

Jessica H. Greathouse
State and Congressional Liaison
U.S. Environmental Protection Agency
(304) 234-0275
(304) 224-3181 cell

----- Forwarded by Jessica Greathouse/R3/USEPA/US on 06/11/2009 12:31 PM -----

Gail Tindal/R3/USEPA/US

06/11/2009 12:27 PM

To "Jessica Greathouse"
<Greathouse.Jessica@epamail.epa.gov>
cc

Subject Fw: Everything that will go out at 12:05 PM - please hold it

until then

Adora Andy

----- Original Message -----

From: Adora Andy

Sent: 06/11/2009 11:53 AM EDT

To: Amy Dewey; Bob Sussman; Gregory Peck; Shawna Bergman; Roxanne Smith

Cc: Betsaida Alcantara; Brendan Gilfillan; Enesta Jones; Allyn

Brooks-LaSure; Gail Tindal

Subject: Everything that will go out at 12:05 PM - please hold it until then

FYI... here are the public documents set to go at 12:05. PLEASE HOLD until then.

Media calls on this issue should be routed to me - email is encouraged.

Shawna, please work with Roxanne to decide how to post the release and MOU on our website.

Thanks,

Adora

Adora Andy

Press Secretary

U.S. Environmental Protection Agency

Office of Public Affairs

202-564-2715

andy.adora@epa.gov

----- Forwarded by Adora Andy/DC/USEPA/US on 06/11/2009 11:50 AM -----

From: "Glunz, Christine M." <[REDACTED]>

To: "Pawlik, Eugene A HQ02" <Eugene.A.Pawlik@usace.army.mil>, Adora Andy/DC/USEPA/US@EPA, Allyn Brooks-LaSure/DC/USEPA/US@EPA, <Betsy_Hildebrandt@ios.doi.gov>, <Matt_Lee-Ashley@ios.doi.gov>, <Kendra_Barkoff@ios.doi.gov>, "LaBolt, Benjamin" [REDACTED] "Reynolds, Christina" <[REDACTED]>

Date: 06/11/2009 11:48 AM

Subject: Everything that will go out at 12:05 PM - please hold it until then

All:

Here is everything that will go out at 12:05 PM today. I am going to send it out to our list of reporters then and will bcc all of you on that e-mail. Please hold all these documents until then.

Thanks!

Christine

Christine M. Glunz

Director of Communications
White House Council on Environmental Quality
202-456-



2009-06-10 Final MOU Logos Sigs.pdf



061109 Lisa Jackson to Terrence Salt - MOU on Mountaintop Mining and Interagency Agency Action Plan (2).pdf



EPA-Corps Enhanced MTM Coordination Procedure.pdf 06 11 09 Mountain Release.pdf



FOR IMMEDIATE RELEASE:
June 11, 2009

Contact: Christine Glunz (CEQ): (202) 456-3469
Kendra Barkoff (DOI): (202) 208-6416
Adora Andy (EPA): (202) 564-2715
Gene Pawlik (USACE): (202) 761-4715

Obama Administration Takes Unprecedented Steps to Reduce Environmental Impacts of Mountaintop Coal Mining, Announces Interagency Action Plan to Implement Reforms

Federal agencies take coordinated action to strengthen oversight and regulation, minimize adverse environmental consequences of mountaintop coal mining

WASHINGTON, DC – Obama Administration officials announced today that they are taking unprecedented steps to reduce the environmental impacts of mountaintop coal mining in the six Appalachian states of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia through a coordinated approach between the Environmental Protection Agency (EPA), Department of the Interior (DOI) and Army Corps of Engineers.

Through a Memorandum of Understanding signed by Lisa P. Jackson, Administrator of the Environmental Protection Agency; Ken Salazar, Secretary of the Interior; and Terrence “Rock” Salt, Acting Assistant Secretary of the Army for Civil Works, the Administration will implement an Interagency Action Plan on mountaintop coal mining that will:

- Minimize the adverse environmental consequences of mountaintop coal mining through short-term actions to be completed in 2009;
- Undertake longer-term actions to tighten the regulation of mountaintop coal mining;
- Ensure coordinated and stringent environmental reviews of permit applications under the Clean Water Act (CWA) and Surface Mining Control and Reclamation Act of 1997 (SMCRA);
- Engage the public through outreach events in the Appalachian region to help inform the development of Federal policy; and
- Federal Agencies will work in coordination with appropriate regional, state, and local entities to help diversify and strengthen the Appalachian regional economy and promote the health and welfare of Appalachian communities.

“Mountaintop coal mining cannot be predicated on the assumption of minimal oversight of its environmental impacts, and its permanent degradation of water quality. Stronger reviews and protections will safeguard the health of local waters, and thousands of acres of watersheds in Appalachia,” said EPA Administrator Lisa P. Jackson. “Our announcement today reaffirms EPA’s fundamental responsibility for protecting the water quality and environmental integrity of streams,

rivers, and wetlands under the Clean Water Act. Getting this right is important to coalfield communities that count on a livable environment, both during mining and after coal companies move to other sites.”

“The Army is pleased to support interagency efforts to increase environmental protection requirements and factual considerations for mountaintop coal mining activities in Appalachia,” said Terrence “Rock” Salt, Acting Assistant Secretary of the Army for Civil Works. “The initiative being announced today will allow us to move forward on a number of important permit applications while providing improved certainty and transparency to permit applicants and the public.”

“The steps we are taking today are a firm departure from the previous Administration's approach to mountaintop coal mining, which failed to protect our communities, water, and wildlife in Appalachia,” said Secretary Salazar. “By toughening enforcement standards, by looking for common-sense improvements to our rules and regulations, and by coordinating our efforts with other agencies, we will immediately make progress toward reducing the environmental impacts of mountaintop coal mining.”

“This agreement represents federal agencies working together to take the President’s message on mountaintop coal mining into action,” said Nancy Sutley, Chair of the White House Council on Environmental Quality. “We are committed to powering our country while protecting health and welfare in the Appalachian region, securing access to clean streams and safe drinking water, and honoring our clean water laws.”

In close coordination, EPA, DOI, and the Corps will take several short-term actions to reform the regulation of mountaintop coal mining under the two primary environmental laws governing this mining practice.

The Army Corps of Engineers and the Environmental Protection Agency will take immediate steps under the CWA to minimize environmental harm by taking the following actions in 2009:

- Requiring more stringent environmental reviews for future permit applications for mountaintop coal mining;
- Within 30 days of the date of the MOU, the Corps will issue a public notice (pursuant to 33 C.F.R. § 330.5) proposing to modify Nationwide Permit (NWP) 21 to preclude its use to authorize the discharge of fill material into streams for surface coal mining activities in the Appalachian region, and will seek public comment on the proposed action;
- Strengthening permit reviews under CWA regulations (Section 404(b)(1)) to reduce the harmful direct and cumulative environmental impacts of mountaintop coal mining on streams and watersheds;
- Strengthening EPA coordination with states on water pollution permits for discharges from valley fills and state water quality certifications for mountaintop coal mining operations; and
- Improving stream mitigation projects to increase ecological performance and compensate for losses of these important waters of the United States.

The Department of Interior will also take the following steps:

- Reevaluate and determine how the Office of Surface Mining Reclamation and Enforcement (OSM) will more effectively conduct oversight of state permitting, state enforcement, and regulatory activities under SMCRA;

- Ensure the protection of wildlife resources and endangered species by coordinating the development of CWA guidance with the U.S. Fish and Wildlife Service (FWS); and
- If the U.S. District Court vacates the 2008 Stream Buffer Zone Rule, as requested by the Secretary of the Interior on April 27, 2009, Interior will issue guidance clarifying the application of stream buffer zone provisions in a preexisting 1983 SMCRA regulation to ensure mining activities will occur in a more environmentally protective way in or near Appalachian streams.

Concurrent with these short-term actions, the three agencies will embark on a comprehensive, coordinated review of their existing respective regulations and procedures governing mountaintop coal mining under existing law. The agencies will also create an interagency working group to promote ongoing Federal collaboration and ensure the Action Plan achieves results. As these reforms are implemented, the agencies will seek to involve the public and guide Federal actions through robust public comment and outreach.

EPA and the Army Corps of Engineers are today taking steps to enhance coordination in the environmental review of pending Clean Water Act permits for surface coal mining activities in Appalachian States. Administrator Jackson and Acting Assistant Secretary Salt have directed EPA and Corps field offices to coordinate under new procedures to ensure Clean Water Act permit decisions are fully consistent with sound science and the law, reduce adverse environmental impacts, provide greater public participation and transparency, and address pending permits in a more timely manner.

The Federal agencies will also work in coordination with appropriate regional, state, and local entities to help diversify and strengthen the Appalachian regional economy and promote the health and welfare of Appalachian communities. This interagency effort will have a special focus on stimulating clean enterprise and green jobs development, encouraging better coordination among existing federal efforts, and supporting innovative new ideas and initiatives.

###



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 11 2009

THE ADMINISTRATOR

Mr. Terrence Salt
Acting Assistant Secretary (Civil Works)
Department of the Army
108 Army Pentagon
Room 3E446
Washington, D.C. 20310-0108

Dear Acting Assistant Secretary Salt:

As you know, the U.S. Environmental Protection Agency, the U.S. Department of the Interior, and the U.S. Army Corps of Engineers, in coordination with the Council on Environmental Quality, have developed a new Memorandum of Understanding and "Interagency Action Plan" designed to significantly reduce the harmful environmental consequences of Appalachian surface coal mining operations, while ensuring that future mining is consistent with federal law. One component of the IAP is the establishment by EPA and the Corps of enhanced coordination procedures to improve the joint review of pending Clean Water Act permit applications. EPA has given thought to how we intend to conduct the review of the approximately 110 pending permit applications subject to these enhanced procedures, and I am writing to provide you with a summary of the regulations and key factual considerations that will form the basis for our identification of pending permit applications that will require further coordination between EPA and the Corps.

The Section 404(b)(1) Guidelines promulgated by EPA in conjunction with the Secretary of the Army establish the substantive environmental standards applied in the review of projects proposing to discharge dredged or fill material in waters of the United States. The Guidelines establish a "sequence" of review requiring: (1) an evaluation of all practicable alternatives that meet the project's basic purpose to ensure that only the least environmentally damaging alternative is permitted; (2) taking all appropriate and practicable steps to minimize potential adverse impacts; and (3) compensation for all remaining unavoidable impacts to aquatic resources. In addition, the Guidelines require that no discharge may be permitted that would cause or contribute to "significant degradation" of the waters of the United States. The Guidelines, therefore, will guide our review of the pending permit applications, and we have highlighted particularly relevant provisions below:

- Guidelines Section 230.10(a) provides that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have

less adverse impact on the aquatic ecosystem. The Guidelines require consideration of project alternatives to eliminate and/or reduce the number of discharges of dredged or fill material occurring in the waters of the United States. When evaluating permit applications in light of this provision, key factual considerations include: the adequacy of the alternatives analysis submitted; the number of valley fills; the number of streams to be impacted; and the number and location of sediment ponds.

- Guidelines Section 230.10(b) provides that no discharge may be permitted that would cause or contribute to an exceedance of an applicable water quality standard, violate any applicable toxic effluent standard, or jeopardize the existence of threatened or endangered species. When evaluating permit applications in light of this provision, key factual considerations include: the pre-mining water quality and potential for water quality impacts downstream of proposed sediment ponds, including impacts from selenium, conductivity, pH, turbidity, dissolved solids, and manganese; and potential impacts to biotic integrity and to threatened and endangered aquatic species.
- Guidelines Section 230.10(c) provides that no discharge shall be permitted that will cause or contribute to significant degradation of the waters of the United States. When evaluating permit applications in light of this provision, key factual considerations include: the cumulative effects of the proposed mine in consideration of previous and reasonably foreseeable future impacts; a watershed assessment of total length of streams to be impacted and/or total area of valley fills in waters of the United States; the extent of high-value streams to be impacted, including extent of impacts to critical headwater streams and/or perennial reaches; the geographic location of the proposed mine; and an assessment of impacts based on a watershed-scale evaluation of stream quality, water temperature, stream diversity, etc.
- Guidelines Section 230.10(d) provides that no discharge shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse environmental impacts of the discharge on the aquatic ecosystem. When evaluating permit applications in light of this provision, key factual considerations include: the total length of streams to be impacted by the proposal; the total length of instream mining-related discharges; the total length of waters affected between the toe of valley fill and sediment ponds; and the adequacy of proposed mitigation to fully compensate for impacts consistent with the requirements of the recently revised mitigation regulations.

These are factors EPA intends to use to screen and evaluate the pending permit applications to determine which permit applications require further coordination between EPA and the Corps. To expedite this process and assist in making EPA's decisions efficient, consistent, and transparent, we intend to utilize a database containing information on each of the pending permit applications. We will review the database's parameters and data requirements with your staff in the near future.

I hope that our agencies will be able to reach agreement on the pending permit applications. While this letter lays out factual considerations EPA expects to review when evaluating the pending permit applications, any action EPA takes, including, if appropriate, any

exercise of EPA's authority under Section 404(c) of the CWA to restrict or prohibit the use of a site for disposal of dredged or fill material, will be based on the statute and regulations.

I look forward to this enhanced cooperation and coordination between our two agencies.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa P. Jackson', with a large loop at the beginning and a trailing flourish.

Lisa P. Jackson



MEMORANDUM OF UNDERSTANDING AMONG THE
U.S. DEPARTMENT OF THE ARMY,
U.S. DEPARTMENT OF THE INTERIOR,
AND U.S. ENVIRONMENTAL PROTECTION AGENCY

IMPLEMENTING THE INTERAGENCY ACTION PLAN ON APPALACHIAN
SURFACE COAL MINING¹

JUNE 11, 2009

PREAMBLE

The mountains of Appalachia possess unique biological diversity, forests, and freshwater streams that historically have sustained rich and vibrant American communities. These mountains also contain some of the nation's richest deposits of coal, which have been mined by generations of Americans to provide heat and electricity to millions in the U.S. and around the world. After generations of mining, however, the region's most readily available coal resources have diminished, and the remaining coal seams are less accessible to non-surface mining methods.

In response, a surface mining technique commonly referred to as "mountaintop mining"² has become increasingly prevalent in the Appalachian region. Although its scale and efficiency has enabled the mining of once-inaccessible coal seams, this mining practice often stresses the natural environment and impacts the health and welfare of surrounding human communities. Streams once used for swimming, fishing, and drinking water have been adversely impacted, and groundwater resources used for drinking water have been contaminated. Some forest lands that sustain water quality and habitat and contribute to the Appalachian way of life have been fragmented or lost. These negative impacts are likely to further increase as mines transition to less accessible coal resources within already affected watersheds and communities.

With this Memorandum of Understanding (MOU), the Department of the Interior (DOI), U.S. Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (Corps)

¹ For purposes of this MOU, "Appalachian surface coal mining" refers to mining techniques requiring permits under both the Surface Mining Control and Reclamation Act (SMCRA) and Section 404 of the Clean Water Act (CWA), in the states of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

² The term "mountaintop mining" may also be referred to as "mountaintop removal" or "valley fill mining."

are announcing this Interagency Action Plan (IAP) designed to significantly reduce the harmful environmental consequences of Appalachian surface coal mining operations, while ensuring that future mining remains consistent with federal law. This IAP includes a set of short-term actions to be implemented in 2009 to existing policy and guidance, and a longer term process for gathering public input, assessing the effectiveness of current policy, and developing regulatory actions.

The Federal government has made a commitment to move America toward a 21st-century clean energy economy based on the recognition that a sustainable economy and environment must work hand in hand. Federal Agencies will work in coordination with appropriate regional, state, and local entities to help diversify and strengthen the Appalachian regional economy and promote the health and welfare of Appalachian communities. This interagency effort will have a special focus on stimulating clean enterprise and green jobs development, encouraging better coordination among existing federal efforts, and supporting innovative new ideas and initiatives.

Interagency Action Plan

I. COORDINATION ON REGULATORY PROGRAMS

This MOU formalizes the agencies' IAP for coordinating the regulation of Appalachian surface coal mining. The elements of the plan are:

- A series of interim actions under existing authorities to minimize the adverse environmental consequences of Appalachian surface coal mining;
- A commitment by the agencies to investigate and, if appropriate, undertake longer term regulatory actions related to Appalachian surface coal mining;
- Coordinated environmental reviews of pending permit applications under the Clean Water Act (CWA) and Surface Mining Control and Reclamation Act (SMCRA); and
- A commitment to engage in robust public participation, through public comment mechanisms and Appalachian public outreach events, helping to inform Federal, State, and local decisions.

In addition to the steps taken above, the Federal government will help diversify and strengthen the Appalachian regional economy. This effort will include the agencies to this MOU, and other Federal agencies, as appropriate, and will work to focus clean energy investments and create green jobs in Appalachia.

Coordination of interagency policy discussions and assessment of policy effectiveness will be achieved in consultation with the Council on Environmental Quality.

II. SHORT-TERM ACTIONS TO MINIMIZE ENVIRONMENTAL HARM

The signatory agencies will take the following short-term actions under existing laws, regulations, and other authorities to reduce the harmful environmental consequences of Appalachian surface coal mining.

Before the end of 2009, the Corps and EPA will take the following steps:

- Within 30 days of the date of this MOU, the Corps will issue a public notice pursuant to 33 C.F.R. § 330.5 proposing to modify Nationwide Permit (NWP) 21 to preclude its use to authorize the discharge of fill material into streams for surface coal mining activities in the Appalachian region, and will seek public comment on the proposed action.
- EPA and the Corps, in coordination with DOI's Fish and Wildlife Service (FWS), will jointly develop guidance to strengthen the environmental review of proposed surface coal mining projects in Appalachia under the CWA Section 404(b)(1) Guidelines.
- Recognizing that the regulation of surface coal mining extends beyond CWA Section 404, EPA will improve and strengthen oversight and review of water pollution permits for discharges from valley fills under CWA Section 402, and of state water quality certifications under CWA Section 401, by taking appropriate steps to assist the States to strengthen state regulation, enforcement, and permitting of surface mining operations under these programs.
- The Corps and EPA, in coordination with FWS and consistent with the agencies' regulations governing compensatory mitigation, will jointly issue guidance clarifying how impacts to streams should be evaluated and how to evaluate proposed mitigation projects to improve the ecological performance of such mitigation implemented to compensate for losses of waters of the United States authorized by Section 404 permits.
- EPA, in coordination with the Corps, will clarify the applicability of the CWA waste treatment exemption for treatment facilities constructed in waters of the United States in order to minimize the temporary impacts of mining operations on streams.

Before the end of 2009, DOI will take the following steps:

- If the 2008 Stream Buffer Zone Rule is vacated by the U.S. District Court for the District of Columbia in *Coal River Mountain Watch et al v. Kempthorne*, 1:08-cv-02212-HHK C, as requested by the Secretary of the Interior on April 27, 2009, the Office of Surface Mining Reclamation and Enforcement (OSM) will issue guidance clarifying the application of the 1983 stream buffer zone provisions to further reduce adverse stream impacts.
- OSM will reevaluate and determine how it will more effectively conduct oversight of State permitting, State enforcement, and regulatory activities under SMCRA.
- OSM will remove impediments to its ability to require correction of permit defects in SMCRA primacy states.

III. DEVELOPMENT OF LONGER TERM REGULATORY ACTIONS TO BETTER MANAGE APPALACHIAN SURFACE COAL MINING

A. OBJECTIVES

The signatory agencies will review their existing regulatory authorities and procedures to determine whether regulatory modifications should be proposed to better protect the environment and public health from the impacts of Appalachian surface coal mining. At a minimum, the agencies will consider:

- Revisions to key provisions of current SMCRA regulations, including the Stream Buffer Zone Rule and Approximate Original Contour (AOC) requirements;
- Eliminating use of Nationwide Permit 21 in connection with surface coal mining in the Appalachian region when the Nationwide Permit Program is reauthorized in 2012; and
- Revisions to how surface coal mining activities are evaluated, authorized, and regulated under the CWA.

B. PROCESS

The signatory agencies will create an interagency working group to coordinate the development of short-term actions, longer term regulatory actions, and coordination procedures for Appalachian surface coal mining. The group will ensure robust public involvement in the development of any proposed actions or regulatory reforms.

For any proposed regulatory revision or other action under this MOU that is a major federal action significantly affecting the quality of the human environment (and is an action subject to NEPA), an Environmental Impact Statement (EIS) will be prepared to inform the decision-making process. At an early stage in the interagency coordination process, the working group will determine whether coordinating these NEPA processes programmatically would more effectively guide regulatory development and decision-making. The interagency group will coordinate with CEQ regarding the implementation of the National Environmental Policy Act (NEPA) in the development of regulatory reforms.

IV. INTERIM INTERAGENCY COORDINATION PROCEDURES

A. Clean Water Act

EPA and the Corps will begin immediately to implement enhanced coordination procedures applicable to the Clean Water Act review of Section 404 permit applications for Appalachian surface coal mining activities that have been submitted prior to execution of this MOU. The goal of these procedures is to ensure more timely, consistent, transparent, and environmentally effective review of permit applications under existing law and regulations. The agencies are issuing these

enhanced joint procedures concurrently with this MOU. Also concurrently, EPA is clarifying the factual considerations it is using to evaluate pending CWA permit applications under the 404(b)(1) Guidelines.

Pending Clean Water Act Section 404 permit applications for Appalachian surface coal mining activities will continue to be evaluated by the Corps and EPA on a case-by-case basis. The agencies will focus their reviews of Appalachian surface coal mining permit applications based on likely environmental impacts with the goal of avoiding, minimizing, and mitigating such impacts to the extent practicable under the CWA Section 404(b)(1) Guidelines and consistent with NEPA. This approach will enable the continued permitting of environmentally responsible projects.

B. Surface Mining Control and Reclamation Act

During 2009, OSM will issue guidance concerning appropriate application of the Stream Buffer Zone rule and other related rules and will ensure that states are implementing their counterpart provisions and SMCRA regulatory programs consistent with the guidance.

V. PUBLIC INVOLVEMENT

This IAP will be accompanied by robust public comment on its short- and longer term actions. The agencies will hold public meetings in Appalachia during 2009 to gather on-the-ground input and encourage ongoing local engagement in the environmental assessment and decision-making process. Additional public participation will occur as agency actions move forward.

VI. GENERAL

A. The policy and procedures contained within this MOU are intended solely as guidance and do not create any rights, substantive or procedural, enforceable by any party. This MOU does not constitute final agency action on any issue, and any actions contemplated by this MOU will be carried out in an appropriate administrative process by the action agency in accordance with all applicable laws and regulations.

B. This document does not, and is not intended to, impose any legally binding requirements on Federal agencies, States, or the regulated public, and does not restrict the authority of the employees of the signatory agencies to exercise their discretion in each case to make regulatory decisions based on their judgment about the specific facts and application of relevant statutes and regulations.

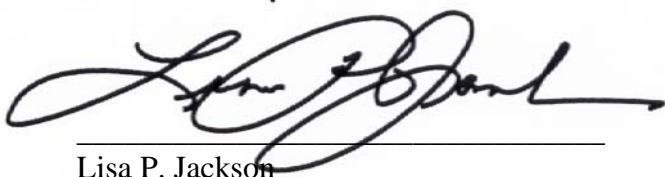
C. Nothing in this MOU is intended to diminish, modify, or otherwise affect statutory or regulatory authorities of any of the signatory agencies. All formal guidance interpreting this

MOU and background materials upon which this MOU is based will be issued jointly by the appropriate agencies.

D. Nothing in this MOU will be construed as indicating a financial commitment by DOI, the Corps, EPA, or any cooperating State agency for the expenditure of funds except as authorized in specific appropriations.

E. This MOU will take effect on the date shown above and will continue in effect until permanent procedures are established, or unless earlier modified or revoked by agreement of all signatory agencies. Modifications to this MOU may be made by mutual agreement of all the signatory agencies. Modifications to the MOU must be made in writing.

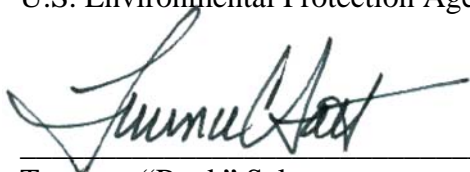
Signed,



Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency



Ken Salazar
Secretary
U.S. Department of the Interior



Terrence "Rock" Salt
Acting Assistant Secretary
of the Army (Civil Works)
U.S. Department of the Army



To: William C. Early, Acting Regional Administrator, EPA Region III
A. Stanley Meiburg, Acting Regional Administrator, EPA Region IV
Bharat Mathur, Acting Regional Administrator, EPA Region V
COL Dionysios Anninos, District Commander, USACE Norfolk District
COL Dana R. Hurst, District Commander, USACE Huntington District
COL Michael P. Crall, District Commander, USACE Pittsburgh District
COL Keith A. Landry, District Commander, USACE Louisville District
LTC Bernard R. Lindstrom, District Commander, USACE Nashville District

From: Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency

Terrence "Rock" Salt,
Acting Assistant Secretary (Civil Works)
Department of the Army

Re: Enhanced Surface Coal Mining Pending Permit Coordination Procedures

The Environmental Protection Agency (EPA) and the Department of the Army have developed enhanced coordination procedures to respond to the unique challenge before us in reviewing pending surface coal mine permit applications in Appalachia. The purpose of this enhanced coordination process is to provide for timely resolution of issues for those permits about which the agencies have substantial environmental concerns, ensure effective coordination among the agencies and consistent compliance with the requirements of the Clean Water Act (CWA), its regulations and relevant policy, and to expedite review and final decisions regarding pending permits for surface coal mining operations in Appalachian states (OH, PA, WV, VA, TN, and KY). It is also important that we provide additional transparency to the public during the enhanced coordination process. The attached Enhanced Coordination Procedures should be implemented immediately.

In accordance with the attached procedures, this process will apply to those permits for which the Corps of Engineers (Corps) has issued a public notice or coordinated with EPA through the Nationwide Permit coordination process by March 31, 2009. 108 CWA section 404 permit applications for surface coal mining activities in Appalachia will be subject to review in accordance with these procedures. (List attached) The timeframes established in the procedures will ensure timely coordination among the agencies and applicants as we make decisions under the CWA and our regulations.

We understand and appreciate the significant work already undertaken by you and your staff to coordinate in the review of pending CWA permits in Appalachia. We look forward to supporting your efforts as the Enhanced Coordination Procedures are implemented. Your staff should contact Mr. Brian Frazer, EPA Regulatory Branch Chief, or Meg Smith, Corps Regulatory Community of Practice, Chief, with any questions about these procedures.

Attachments

EPA/Corps of Engineers
Enhanced Coordination Process
for
Pending Clean Water Act Permits Involving Appalachian Surface Coal Mining¹

Issue:

The Corps of Engineers (Corps) has determined there are 108 CWA section 404 permit applications under review for surface coal mining activities proposing to discharge fill material into the waters of the U.S. These applications are being reviewed in 5 Corps Districts covering 6 states (OH, PA, WV, VA, TN, and KY) in Appalachia where the mining is proposed. Many of these permits have been pending for over a year as a result of ongoing litigation and other issues. The review and evaluation of these pending permits poses a unique challenge for EPA and the Corps requiring an enhanced coordination process.

To deal with this unique challenge, EPA and the Corps hereby establish a process for enhanced coordination that:

1. expedites review and final decisions regarding all pending permits,
2. provides for timely resolution of issues for those permits about which EPA has raised substantial environmental concerns,
3. ensures effective coordination among the agencies and consistent compliance with applicable provisions of the Clean Water Act, its regulations and relevant policy, and
4. provides additional transparency to the public during the enhanced coordination period.

The procedures below will apply to applications for individual and Nationwide general permits for which the Corps has issued a public notice or coordinated with EPA through the NWP coordination process by March 31, 2009. These procedures will apply to EPA Regions 3 (Philadelphia), 4 (Atlanta), and 5 (Chicago), and Corps Districts Pittsburgh, Huntington, Louisville, Nashville, and Norfolk. The agencies will continue to rely on existing coordination and review procedures for permit applications public noticed or coordinated after March 31, 2009.

General Review and Coordination Procedures:

- In early March 2009, the Corps districts noted above prepared a list of pending permit applications where the districts anticipated reaching a final permit decision within 60 days. Of this list of 48 permit applications, EPA identified 6 permit applications for which they had substantial environmental concerns. Additional review and coordination was undertaken for these 6 permits. EPA notified the Corps that it did not have concerns about the remaining 42 permit applications. Normal processing of these applications is continuing and permits for several of these 42 have been issued.
- There are 108 permits (List Attached) for which public notices or pre-construction notifications were issued prior to March 31, 2009 that are being reviewed by EPA Regions 3, 4, and 5 in coordination with EPA HQ. Corps Districts will provide EPA Regions with additional available information, including additional information requested from permit applicants, as necessary, regarding these

¹ "Appalachian surface coal mining" refers to mining techniques requiring permits under both the Surface Mining Control and Reclamation Act (SMCRA) and Section 404 of the Clean Water Act (CWA), in the states of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

applications in response to EPA's written request. Within 45 days² of receipt of the additional data requested by EPA for these of permit applications, EPA Regions 3, 4, and 5, after review by EPA headquarters, will propose an initial list of permit applications about which the Regions have concerns and permit applications with which the Corps may proceed without further action by EPA. This initial list will identify the nature of environmental concerns EPA has identified, any steps recommended to be consistent with the Section 404(b)(1) guidelines, and actions EPA is recommending to respond to its concerns. EPA's evaluation of these permit applications will be based on the factual considerations shared previously with the Corps and EPA's views concerning compliance with existing statutory, regulatory, and policy provisions.

- The initial list developed by EPA will be transmitted to the Corps and made available to the public on the Websites of the EPA Region involved. Within 14 days after the proposed list is posted on the EPA Website, each EPA Region will identify to EPA headquarters those permit applications raising concern and applications that may proceed without further action by EPA. EPA HQ will then promptly submit to Corps HQ a consolidated EPA list of these permit applications. Permit applications raising concern will be subject to additional coordination and review following the procedures and timeframes identified below. Permit applications not subject to additional review and coordination may be acted on by the Corps without further coordination with EPA.

Enhanced EPA/Corps Coordination Procedures for Permit Applications of Substantial Concern:

- In order to facilitate timely resolution, each Corps District and EPA Region is encouraged to begin discussions immediately (i.e., before the 60 day clock is triggered below) on those permit applications requiring additional review and coordination. This coordination may include phone conversations, field visits, exchange of new information, and other steps that help to reduce the total time necessary to reach agreement on each permit.
- When a permit application is ready for enhanced coordination consistent with the procedures below, each Corps District will provide written notice to the EPA Region. This Corps determination will be based on workload considerations, completeness of information available on each application, and other factors to ensure that the following 60 day coordination process will be as effective as possible. Corps' determinations that particular permits are ready for coordination will be promptly posted on the relevant EPA Regional website.
- Upon receipt of notification from the Corps, each District and Region will begin immediately to coordinate to discuss permit applications EPA has identified as having remaining concerns in an effort to reach timely resolution. Other relevant parties including state agencies, permit applicants, and involved consultants shall be encouraged to participate to facilitate resolution. Each Corps District and EPA Region will have 60 days to coordinate and resolve each permit application of concern. The 60 days begins on the date EPA receives the Corps' written notice described above. Meetings may include face to face discussions or teleconferences. The agencies will coordinate to ensure that a sufficient number of meetings are held to provide an effective opportunity for resolution. Meetings should include all relevant parties including mining companies and their consultants, other state or federal agencies, and agency HQs. EPA and the Corps will strive to adhere to the 60 day timeframe for interagency coordination; however, when workload dictates or issue resolution warrants, EPA or the Corps may seek a 15 day time extension.
- Should the Corps choose to issue a permit after the conclusion of the coordination period and where there are unresolved issues, the Corps will provide, within 10 days after the close of the 60 day period,

² If any timeframes in this memo fall on a weekend or Federal holiday, that timeframe is automatically extended to the next business day.

their Regional counterpart a written notice of decision to issue a permit which details how the District is responding to concerns raised by EPA. Such responses may include, for example, revisions to approved discharges, special conditions, or mitigation requirements. The Corps is encouraged to provide EPA with a draft of the permit and decision documents during this period.

- Within 10 days after receipt of the written notice of decision, the EPA Region will either (1) advise the Corps District that it does not intend to pursue further action and the Corps, therefore, is free to make a permit decision or (2) initiate action under CWA Section 404(c)

Considerations:

- These procedures and timeframes are intended to facilitate effective and timely coordination and the agencies will work to adhere to them to the maximum practical extent, recognizing that flexibility may be needed under particular circumstances. The timeframes may be shortened or extended by mutual agreement among the agencies.
- Full and open sharing of information among the agencies is necessary for efficient review of proposed projects.
- This document does not, and is not intended to, impose any legally binding requirements on Federal agencies, States, or the regulated public, and does not restrict the authority of the employees of the signatory agencies to exercise their discretion in each case to make regulatory decisions based on their judgment about the specific facts and application of relevant statutes and regulations.
- The policy and procedures contained within this document are intended solely as guidance and do not create any rights, substantive or procedural, enforceable by any party. This document does not constitute final agency action on any issue, and any actions contemplated by this document will be carried out in an appropriate administrative process by the agencies in accordance with all applicable laws and regulations.

Effective Date: June 11, 2009

Attachment: List of 108 Permits

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

| District | Corps Number | SMCRA Number | Applicant name | Project Name |
|------------|--------------|------------------------|---------------------------|----------------------------|
| Huntington | 200300065 | S-5027-99 | Hobet Mining | Hewett |
| Huntington | 200400336 | 898-0715 | Bear Fork | Bear Fork |
| Huntington | 200400624 | S-5025-97 | Independence Coal Company | Constitution Surface Mine |
| Huntington | 200400867 | S-45014-04 | Central Appal Mining | Remining No. 3 |
| Huntington | 200401152 | 10296 | Buckingham Coal | Buckingham Wash Plant |
| Huntington | 200401155 | S-2001-05 | Brooks Run Mining | Brandy St & Cove Mtn |
| Huntington | 200401451 | S-5001-02 | Independence Coal Company | Glory Surface Mine |
| Huntington | 200500167 | U-3004-06 | Catenary Coal Co. | Tenmile Fork Deep Mine |
| Huntington | 200500217 | S-4014-01 | Bluestone | Contour Auger 1 |
| Huntington | 200500421 | D-2295 | Oxford | Peabody 3 |
| Huntington | 200500753 | D-2290-1 | Oxford Mining | Long Sears Adjacent |
| Huntington | 200500934 | 898-5694 Am5 | Premier Elkhorn | U/T Old Beefhide |
| Huntington | 200501115 | O-10-83IBR9 | Green Valley Coal Company | Blue Branch Refuse |
| Huntington | 200501198 | S-5008-02 S-5021-01 | Marrowbone Development | Taywood W & Marrowbone |
| Huntington | 200501211 | S-5020-99 AM3 | Premium Energy, Inc. | Premium Mills Surface Mine |
| Huntington | 200501275 | 10397 | Oxford | Mizer |
| Huntington | 200501385 | 10400 | Oxford | Halls Knob |

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

| District | Corps Number | SMCRA Number | Applicant name | Project Name |
|------------|--------------|----------------|--------------------------|----------------------------|
| Huntington | 200600100 | S-5009-00 | ICG Eastern, LLC | Jenny Creek Surface Mine |
| Huntington | 200600126 | 860-0390 Am4 | Consol of KY | Area 80 |
| Huntington | 200600127 | 860-5260 Am1 | Consol of KY | Slone Br Mine |
| Huntington | 200600821 | U-3001-98 IBR5 | Catenary Coal Co. | Laurel Fork |
| Huntington | 200602033 | S-3016-06 | Wildcat | No. 2 Surface |
| Huntington | 200602256 | 10379 | Oxford Mining | Horn |
| Huntington | 200602290 | S-7-81 | Colony Bay Coal Co. | Colony Bay Surface Mine |
| Huntington | 200700182 | S-3011-07 | Alex Energy, Inc. | Federal Surface Mine |
| Huntington | 200700282 | U-4012-06 | Pioneer Fuel | Little Eagle |
| Huntington | 200700285 | S-3009-07 | Alex Energy, Inc. | Lonestar Surface Mine |
| Huntington | 200700286 | S-3010-06 | Pioneer Fuel | MT5B |
| Huntington | 200700499 | 10372 | Oxford Mining | Page |
| Huntington | 200700708 | 10391 | Surface Mining Inc | Young Property |
| Huntington | 200701021 | 10405 | Oxford Mining | Kaiser Mathias |
| Huntington | 200800114 | U-3016-95 | Performance Coal Company | Upper Big Branch Deep Mine |
| Huntington | 200800491 | S-5002-07 | CONSOL of Energy | Buffalo Mt. Surface Mine |
| Huntington | 200800562 | S-4004-07 | Eastern Associated Coals | Huff Creek Surface Mine |

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

| District | Corps Number | SMCRA Number | Applicant name | Project Name |
|------------|--------------|--------------------|-------------------------|--------------------------------|
| Huntington | 200800791 | S-5002-07 | Hobet Mining | Surface Mine No. 45 |
| Huntington | 200800805 | S-3001-08 | Coyote Coal Company | Joes Creek Surface Mine |
| Huntington | 200800830 | S-5006-07 | CoalMac, Inc. | Pine Creek Surface Mine |
| Huntington | 200800935 | U-5010-08 | Hampden Coal | Harrys Br |
| Huntington | 200801098 | S-5018-08 | Frasure Creek Mining | Spring Fork Surface Mine No. 2 |
| Huntington | 200802160 | 10403 | B&N Coal | Whigville III |
| Huntington | 200900427 | U-5023-92 | Argus Energy WV, LLC | Devils Trace No. 2 Punchout |
| Huntington | 200900428 | U-5031-08 | Consol of Kentucky | Spring Branch No. 3 Deep Mine |
| Louisville | 200301276 | 897-0430 A1 | Candle Ridge Mining | Candle Ridge Mining |
| Louisville | 200500851 | 867-0440 | Cheyenne Resources | Cheyenne Resources |
| Louisville | 200501893 | 895-0171 | Sturgeon Mining | Sturgeon Mining |
| Louisville | 200600756 | 897-0457 A2 | ICG Hazard | ICG Hazard |
| Louisville | 200601124 | 836-5488, 836-0317 | Matt/Co | Matt/Co |
| Louisville | 200601290 | 877-0167, 877-0168 | Licking River Resources | Licking River Resources |
| Louisville | 200601296 | 898-4150 A1 | Clintwood Elkhorn | Clintwood Elkhorn |
| Louisville | 200700069 | 898-0803 | CAM Mining | Cane Branch |
| Louisville | 200700193 | 898-0400 | Premier Elkhorn Coal | Premier Elkhorn Coal |

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

| District | Corps Number | SMCRA Number | Applicant name | Project Name |
|------------|--------------|--------------|-------------------------|---------------------------|
| Louisville | 200700217 | 897-0480 | Leeco, Inc. | Stacy Branch Surface Mine |
| Louisville | 200700335 | 898-0607 | Apex Energy | Apex Energy |
| Louisville | 200700393 | 867-0456 | Consol of KY | Razorblade Surface Mine |
| Louisville | 200700400 | 895-0177 | Candle Ridge Mining | Candle Ridge Mining |
| Louisville | 200700400 | 864-0195 | Argus Energy | Argus Energy |
| Louisville | 200700594 | 898-0800 | Premier Elkhorn Coal | Premier Elkhorn Coal |
| Louisville | 200700595 | 860-0455 | Leeco, Inc. | Elk Lick |
| Louisville | 200700669 | 836-0338 | Miller Bros. Coal | Miller Bros. Coal |
| Louisville | 200700706 | 858-0206 | Johnson Floyd Coal | Johnson Floyd Coal |
| Louisville | 200700733 | 880-5071 | Martin County Coal | Martin County Coal |
| Louisville | 200700815 | 877-0176 | Licking River Resources | Licking River Resources |
| Louisville | 200700867 | 898-0779 | CAM Mining | CAM Mining |
| Louisville | 200701026 | 836-0341 A1 | Frasure Creek Mining | Frasure Creek Mining |
| Louisville | 200701044 | 898-0712 | Apex Energy | Apex Energy |
| Louisville | 200701104 | 836-0292 A1 | The Raven Co. | The Raven Co. |
| Louisville | 200701131 | 836-0335 A2 | Miller Bros. Coal | Miller Bros. Coal |
| Louisville | 200701132 | 836-0349 | Miller Bros. Coal | Frasure Branch Mine |

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

| District | Corps Number | SMCRA Number | Applicant name | Project Name |
|------------|--------------|--------------|----------------------|---------------------------|
| Louisville | 200701190 | 897-0355 A3 | Pine Branch Coal | Pine Branch Coal |
| Louisville | 200701205 | 836-0307 | Matt/Co | Matt/Co |
| Louisville | 200701206 | 877-0782 | Frasure Creek Mining | Frasure Creek Mining |
| Louisville | 200701224 | 860-5304 | Miller Bros. Coal | Miller Bros. Coal |
| Louisville | 200701230 | 860-8012 | ICG Knott Co. | ICG Knott Co. |
| Louisville | 200701301 | 836-0335 | CAM Mining | Tom's Branch Surface Mine |
| Louisville | 200701397 | 836-0350 | FCDC | FCDC |
| Louisville | 200701406 | 860-0462 | ICG Hazard | Bearville North |
| Louisville | 200701445 | 836-0339 | FCDC | FCDC |
| Louisville | 200701504 | 898-0783 A3 | CAM Mining | CAM Mining |
| Louisville | 200701515 | 897-0456 A10 | ICG Hazard | ICG Hazard |
| Louisville | 200701518 | 898-0799 | Clintwood Elkhorn | Clintwood Elkhorn |
| Louisville | 200701582 | 813-0319 | Miller Bros. Coal | Miller Bros. Coal |
| Louisville | 200701644 | 877-0166 | Consol of KY | Consol of KY |
| Louisville | 200701660 | 880-0066 | Martin County Coal | Findlay Branch Mine |
| Louisville | 200800095 | 898-0817 | Premier Elkhorn Coal | Premier Elkhorn Coal |
| Louisville | 200800114 | 897-0445 A1 | BDCC Holdings | Cherries Branch |

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

| District | Corps Number | SMCRA Number | Applicant name | Project Name |
|------------|--------------|--------------|-----------------------|--|
| Louisville | 200800115 | 836-0356 | Wolverine Resources | Jake Fork and Stoney Branch Surface Mine |
| Louisville | 200800138 | 807-0352 | Chas Coal | Chas Coal |
| Louisville | 200800139 | 898-0646 A1 | Apex Energy | Apex Energy |
| Louisville | 200800226 | 880-8002 A4 | Czar Coal | Czar Coal |
| Louisville | 200800239 | 813-0328 | Frasure Creek Mining | Frasure Creek Mining |
| Louisville | 200800408 | 880-0156 | Czar Coal | Czar Coal |
| Louisville | 200800525 | 877-0191 | Middle Fork | Middle Fork |
| Louisville | 200800654 | 860-0464 | Enterprise Mining | Enterprise Mining |
| Louisville | 200800727 | 813-0310 A1 | Miller Bros. Coal | Miller Bros. Coal |
| Louisville | 200800777 | 897-0455 A3 | ICG Hazard | ICG Hazard |
| Louisville | 200800781 | 836-0348 | Wolverine Resources | Wolverine Resources |
| Louisville | 200801368 | 919-0067 | North Fork Collieries | Gilmore Surface Mine |
| Nashville | 200201435 | 3064 | Premium Coal | Refuse Area No.3 |
| Nashville | 200400062 | 3143 | Premium Coal | Area 19 |
| Nashville | 200400609 | 3112 | Appolo Fuels | Jellico Strip |
| Nashville | 200401108 | 918-0392 | Ikerd Coal | Ikerd Coal |
| Nashville | 200401391 | 861-0467 | CH Development | CH Development |

LIST OF 108 PENDING 404 PERMIT APPLICATIONS

| District | Corps Number | SMCRA Number | Applicant name | Project Name |
|------------|--------------|--------------|----------------------------|-----------------------------------|
| Nashville | 200501691 | 3191 | Appolo Fuels | Buckeye Springs Mine No. 2 |
| Nashville | 200601647 | 807-0342 | Nally & Hamilton | Nally & Hamilton |
| Nashville | 200700820 | 807-0355 | Nally & Hamilton | Nally & Hamilton |
| Nashville | 200900382 | 8502 | Tennessee Land Reclamation | Cherry Branch Reclamation Project |
| Pittsburgh | 200600660 | 10395 | Ohio American Energy | Red Bird South |
| Pittsburgh | 200701180 | 10399 | Oxford Mining Company LLC | Ellis Area |